

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

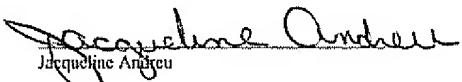
In re Application of : Customer Number: 23,630
John G. Babisch et al. :
Application No.: 10/789,814 : Confirmation Number: 5630
: Group Art Unit: 1617
Filed: Feb. 27, 2004 : Examiner: KANTAMneni, Shobha
:

For: SYNERGISTIC AND ANTIINFLAMMATORY PHARMACEUTICAL
COMPOSITIONS AND METHODS OF USE

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being electronically-transmitted to the
United States Patent and Trademark Office on July 01, 2009



PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)

Sir:

Applicants requests revival of the above-identified application, which was unintentionally abandoned.

A response to Final Office Action was timely filed in the above-referenced application before the statutory bar date (May 5, 2009) for such response; however, the terminal disclaimers necessary to complete the response were disapproved by the Patent Office because the agent who signed the terminal disclaimers was not of record. Please see the 06/08/2009 Advisory Action, a copy of which is submitted herewith in Appendix A.

Applicants hereby submit that at no time was there intent to cause the application to become abandoned and that the error in the terminal disclaimers was unintentional.

A new Power of Attorney and the required terminal disclaimers are concurrently being filed with this petition. Copies of the Power of Attorney and the terminal disclaimers are

Application No.: 10/789,814

included herewith in Appendix B.

The Examiner is invited to call the undersigned agent if there are any questions.

Please charge Deposit Account No. 50-1133 the amounts of \$1,620.00, required under 37 C.F.R. § 1.17(m), to the cover the petition fee, and \$280.00, required under 37 C.F.R. § 1.20(d), to cover the fee for the terminal disclaimers. The Commissioner for Patents is also authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1133 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Atabak R. Royaeen
Registration No. 59,037

28 State Street
Boston, MA 02109
Phone: 617-535-4108
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Date: July 01, 2009

**Please recognize our Customer No. 23,630
as our correspondence address.**

APPENDIX A



UNITED STATES PATENT AND TRADEMARK OFFICE

THE TRADEMARK OFFICE

JUN 15 2009

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

MW & E

APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
10/789,814	02/27/2004	John G. Babisch	068911-0075	5630

7590 06/08/2009
Simona A. Levi, Minzi Ph.D., JD
McDermott Will & Emery LLP
201 S. Biscayne Boulevard, ste. 2200
Miami, FL 33131

EXAMINER	
KANTAMneni, SHOBHA	
ART UNIT	PAPER NUMBER
1617	

MAIL DATE	DELIVERY MODE
06/08/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

McDermott Will & Emery LLP
Re: _____
Action Date: _____
Action Due: _____
Docketed By: JAF Date: 6/16/09

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/789,814	Applicant(s) BABISH ET AL
	Examiner Shobha Kantamneni	Art Unit 1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE

- 1 The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) The period for reply expires 6 months from the mailing date of the final rejection
 - b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

- 2 The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

- 3 The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) They raise the issue of new matter (see NOTE below);
 - (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____ (See 37 CFR 1.116 and 41.33(a))

- 4 The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

- 5 Applicant's reply has overcome the following rejection(s): _____

- 6 Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

- 7 For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE

Claim(s) objected to: _____

Claim(s) rejected: 4-7

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

- 8 The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

- 9 The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

- 10 The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

- 11 The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see page 2.

- 12 Note the attached Information Disclosure Statement(s) (PTO/SB/08) Paper No(s) _____

- 13 Other: _____

/SREENI PADMANABHAN/
Supervisory Patent Examiner. Art Unit 1617

Continuation of 11:

Applicant's arguments that "the claims 1,8,9,13,14,18,21-27.152 in application No. 10/464,410 do not render obvious the claims in the instant application" are persuasive. The rejection of claims 4-7 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,8,9,13,14,18,21-27.152 of copending Application No. 10/464,410 made in the final office action dated 11/05/2008 is herein withdrawn

Applicant's arguments that "the claims 1, 35-36, 39-40 in application No. 10/464,834 do not render obvious the claims in the instant application" are persuasive. The rejection of claims 4-7 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 35-36, 39-40 of copending Application No. 10/464,834 made in the final office action dated 11/05/2008 is herein withdrawn

Applicant's arguments that "the claims 91-97,99-102,105-109 in application No. 11/344,555, the claims 110-134 of application No 11/344,556, the claims 51,116-131 of application No. 11/344,557, the claims 35-46 of application No. 11/403,034, the claims 1-12 of 10/789817" do not render obvious the claims in the instant application" are persuasive. The rejection of claims 4-7 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 11/344,555, 11/344,556, 11/344,557, 11/403,034, 10/789817 made in the final office action dated 11/05/2008 is herein withdrawn

The rejection of Claims 4-7 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Applications 11/344552, 11/344554, made in the final office action dated 11/05/2008 are MAINTAINED. Note the terminal disclaimers provide by the applicant are disapproved by the office because attorney is not of record/POA required.

Application No.: 10/789,814

APPENDIX B

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**POWER OF ATTORNEY
OR
REVOCATION OF POWER OF ATTORNEY
WITH A NEW POWER OF ATTORNEY
AND
CHANGE OF CORRESPONDENCE ADDRESS**

Application Number	10/789,814
Filing Date	02/27/2004
First Named Inventor	John G. Babish et al.
Title	Synergistic Anti-Inflamm . . .
Art Unit	1817
Examiner Name	Kontamneni, Shobha
Attorney Docket Number	086911-0075

I hereby revoke all previous powers of attorney given in the above-identified application.

A Power of Attorney is submitted herewith.

OR

I hereby appoint Practitioner(s) associated with the following Customer Number as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith:

23,630

OR

I hereby appoint Practitioner(s) named below as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith:

Practitioner(s) Name	Registration Number

Please recognize or change the correspondence address for the above-identified application to:

The address associated with the above-mentioned Customer Number.

OR

The address associated with Customer Number:

OR

Firm or Individual Name

Address

City

State

Zip

Country

Telephone

Email

I am the:

Applicant/Inventor

OR

Assignee of record of the entire interest. See 37 CFR 3.71
Statement under 37 CFR 3.73(b) (Form PTO/SB/96) submitted herewith or filed on _____

SIGNATURE of Applicant or Assignee of Record

Signature	Dennis Emma	Date	6/23/09
Name	DENNIS EMMA	Telephone	253-853 7267
Title and Company	D.R. Intel. Prop - Metaproteomics LLC		

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

Total of 2 forms are submitted

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2